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TO AMEMBASSY SAIGON

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TAGS: AFSP, ABLD, VS

SUBJ : VIETNAMESE SUITS IN U.S. COURT OF CLAIMS

REF: STATE 80796 ET AL.

1. DEPARTMENT REPRESENTATIVES MET WITH GVN EMBASSY'S FIRST SECRETARY NGUYEN CONG AN ON JULY 12,1974, TO PRESENT FOLLOWING NOTE:

2. THE DEPARTMENT OF STATE WISHES TO INFORM THE EMBASSY OF VIET-NAM OF CLAIMS FILED BY A NUMBER OF VIETNAMESE CITIZENS AGAINST THE UNITED STATES GOVERNMENT IN THE UNITED STATES COURT OF CLAIMS IN THE CITY OF WASHINGTON, DISTRICT OF COLUMBIA. THE CASES INVOLVE DISPUTES OVER THE AMOUNT OF PIASTERS PAID THESE VIETNAMESE CITIZENS BY THE UNITED STATES GOVERNMENT UNDER THE TERMS OF CONTRACTS ENTERED INTO IN THE REPUBLIC OF VIET-NAM. THREE CASES ARE NOW PENDING BEFORE THE COURT OF CLAIMS, BUT SEVERAL HUNDRED MORE CASES MAY YET BE FILED.

3. SHOULD THE COURT OF CLAIMS RENDER A DECISION UNFAVORABLE TO THE UNITED STATES, A LARGE PIASTER PAYMENT TO THE LIMITED OFFICIAL USE

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VIETNAMESE PLAINTIFFS WOULD BE REQUIRED. SUCH PAYMENT

WOULD BE MADE FROM PIASTER ACCOUNTS IN SAIGON WHICH ARE

USUALLY MADE AVAILABLE TO THE GOVERNMENT OF THE REPUBLIC OF VIET-NAM AS PART OF OUR ECONOMIC ASSISTANCE PROGRAM. RECOGNIZING YOUR GOVERNMENT'S POTENTIAL DIRECT INTEREST AND THE COMPLEX ISSUES WHICH THESE CASES PRESENT, THE DEPARTMENT REQUESTS THAT YOUR GOVERNMENT

ASSIST OUR GOVERNMENT IN DEFENDING AGAINST THESE VIETNAMESE CLAIMANTS. FURTHERMORE, THE DEPARTMENT WISHES TO NOTIFY YOUR GOVERNMENT THAT THE REPUBLIC OF VIET-NAM MAY FILE A MOTION TO INTERVENE IN THESE CASES AND PARTICIPATE AS A PARTY DEFENDANT.

4. THE UNITED STATES WILL, OF COURSE, CONTINUE TO INFORM THE REPUBLIC OF VIET-NAM OF DEVELOPMENTS IN THESE CASES. A DETAILED REVIEW IS ATTACHED.

5. DETAILED REVIEW

6. THE THREE CASES NOW PENDING IN THE U.S. COURT OF CLAIMS IN WASHINGTON ARE PHAM THI DINH V. UNITED STATES, CT. CL. NO. 205-73; TRUONG THI ANH V. UNITED STATES, CT. CL. NO. 360-73; CONG-TY BAT DONG SAN DONG-NAI V. UNITED STATES, CT. CL. NO. 364-73. THESE CASES HAVE BEEN BROUGHT BY THREE VIETNAMESE LANDLORDS TO ASCERTAIN WHETHER THE UNITED STATES GOVERNMENT IS OBLIGED TO MAKE ADDITIONAL PAYMENTS ON RENTAL LEASES FOR UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT (USAID) PERSONNEL FACILITIES IN VIET-NAM. OTHER CASES ARE ALSO PENDING IN THE SAME COURT ARISING FROM BOTH THE LEASING AND THE CONSTRUCTION OF FACILITIES FOR USE BY THE UNITED STATES GOVERNMENT. THE BASIS OF ALL OF THESE CLAIMS IS THAT THE PLAINTIFFS WERE ALLEGEDLY ENTITLED TO RECEIVE HIGHER PIASTER PAYMENTS FOR THEIR CONTRACTS WITH THE UNITED STATES GOVERNMENT THAN THEY IN FACT RECEIVED.

7. AS THE EMBASSY IS AWARE, THE ANNEX TO THE ECONOMIC COOPERATION AGREEMENT BETWEEN THE GOVERNMENT OF VIET-NAM AND THE UNITED STATES GOVERNMENT (TREATIES AND OTHER LIMITED OFFICIAL USE

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INTERNATIONAL ACTS SERIES 2346) CREATES A TRUST ACCOUNT FROM WHICH THE UNITED STATES GOVERNMENT MAY MAKE DISBURSEMENTS FOR THE LEASING OF FACILITIES FOR USAID PERSONNEL. AS A RESULT, ANY RECOVERY IN THE ABOVE-REFERENCED USAID CASES WILL RESULT IN CLAIMS BY THE UNITED STATES GOVERNMENT AGAINST COUNTERPART TRUST FUNDS BELONGING TO THE GOVERNMENT OF VIET-NAM. THOUGH THE UNITED STATES GOVERNMENT IS HOPEFUL THAT IT WILL PREVAIL IN THE

DEFENSE OF THESE SUITS, THE DEPARTMENT OF STATE IS OBLIGED TO NOTIFY THE EMBASSY OF VIET-NAM THAT, IF THE COURT HOLDS THE UNITED STATES GOVERNMENT LIABLE FOR ADDITIONAL PIASTER PAYMENTS FOR THESE FACILITIES, THE UNITED STATES GOVERNMENT INTENDS TO DEDUCT SUCH AMOUNTS FROM THE TRUST FUND. THE EXACT AMOUNT OF SUCH POTENTIAL LIABILITY IS, OF COURSE, UNKNOWN AT THIS TIME, BUT IT COULD BE QUITE SUBSTANTIAL, PERHAPS SEVERAL MILLION DOLLARS.

8. BECAUSE EXCHANGE RATE QUESTIONS ARE COMPLEX MATTERS AND PARTICULARLY WITHIN THE KNOWLEDGE OF THE REPUBLIC OF VIET-NAM IN THAT VIETNAMESE LAW FORMS AN IMPORTANT PART OF THE BASIS FOR THESE CLAIMS, THE UNITED STATES GOVERNMENT WOULD APPRECIATE THE GOVERNMENT OF VIET-NAM GIVING CAREFUL CONSIDERATION TO THE POSSIBILITY OF ASSISTING THE UNITED STATES DEPARTMENT OF JUSTICE IN PREPARING FOR THE TRIAL OF THESE CASES BY PROVIDING AFFIDAVITS, PERTINENT DOCUMENTS, AND EXPERT WITNESSES MAKING CLEAR THE INTENT AND MEANING OF SUCH MATTERS AS ARTICLE 16 OF DECREE LAW 017/SLU OF SEPTEMBER 3, 1966; DECREE LAW 002/SLU OF JUNE 17, 1966; DECREE 035/SLU ISSUED AUGUST 29, 1967, AND EFFECTIVE OCTOBER 1, 1967; AND THE INTERGOVERNMENTAL AGREEMENTS OF AUGUST 29, 1967, AND SEPTEMBER 2, 1967. BEYOND SUCH ASSISTANCE, THE GOVERNMENT OF VIET-NAM MAY WISH TO FILE A MOTION TO INTERVENE IN THESE CASES IN ORDER TO REPRESENT ITS OWN INTERESTS IN THESE CASES. THE COURT OF CLAIMS HAS ISSUED AN ORDER, A COPY OF WHICH IS ATTACHED, WHICH PERMITS THE REPUBLIC OF VIET-NAM TO SO INTERVENE AS A PARTY DEFENDANT. IF THE REPUBLIC OF VIET-NAM DOES NOT CHOOSE TO INTERVENE, THE UNITED STATES DEPARTMENT OF JUSTICE WILL, OF COURSE, DO ITS UTMOST TO DEFEND THESE CASES, AND THE ASSISTANCE OF THE GOVERNMENT LIMITED OFFICIAL USE

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OF VIET-NAM IN THIS REGARD WOULD BE GREATLY APPRECIATED.

9. LASTLY, THE DEPARTMENT OF STATE WISHES TO EMPHASIZE THAT RECEIPT OF THIS INFORMATION BY THE EMBASSY OF VIET-NAM DOES NOT COMPEL THE GOVERNMENT OF VIET-NAM TO APPEAR IN THESE CASES NOR TAKE ANY OTHER ACTION BEFORE THE UNITED STATES COURT OF CLAIMS. THE PURPOSE OF THIS NOTIFICATION BY THE DEPARTMENT IS TO REQUEST THE ASSISTANCE OF THE GOVERNMENT OF VIET-NAM IN THE DEFENSE OF THESE SUITS AND TO INFORM THE GOVERNMENT OF VIET-NAM THAT IT MAY, IF IT WISHES, INTERVENE AS A PARTY DEFENDANT TO PRESENT ITS VIEWS TO THE COURT. THE DEPARTMENT OF STATE WOULD WELCOME DISCUSSIONS AS TO THE BEST MANNER IN WHICH THE UNITED STATES DEPARTMENT OF JUSTICE CAN

COORDINATE THE DEFENSE OF THE MUTUAL INTERESTS OF THE
REPUBLIC OF VIET-NAM AND THE UNITED STATES GOVERNMENT
IN THESE CASES.

10. ATTACHMENT - COURT OF CLAIMS ORDER(BEING POUCHED)

11. A COPY OF THE NOTE IS BEING POUCHED TO SAIGON TO
ATTENTION OF LEGAL ADVISER J. JACOBSON.

12. DEPARTMENT REQUESTED ASSISTANCE OF GVN IN DEFENDING
AGAINST CLAIMS. DEPARTMENT NOTIFIED EMBASSY THAT GVN
MAY ENTER BUT WAS NOT COMPELLED TO DO SO. KISSINGER

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